BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993	)	
	)	WT Docket No. 07-71
Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services	)	

COMMENTS OF TELESPAN COMMUNICATIONS, LLC

TeleSpan Communications, LLC ("TeleSpan") hereby submits its reply comments to WT Docket No. 07-71. In particular, TeleSpan wishes to comment on and amplify some of the points raised by Sprint Nextel in its comments submitted in this docket on May 7, 2007, in light of its own experiences.

Sprint Nextel raised particular concerns about the practices of the Regional Bell Operating Companies regarding pricing for special access services that constitute a critical input for Commercial Mobile Radio Service ("CMRS") providers. Although TeleSpan is not a CMRS provider, TeleSpan serves the CMRS industry as a wholesale carrier in competition with several incumbent local exchange carriers ("ILECs"), primarily AT&T. More specifically, since 1998, TeleSpan has operated as a competitive access provider ("CAP") providing dedicated, point-to-point, private line circuits almost exclusively (to date) to Commercial Mobile Radio Service ("CMRS") providers on a wholesale carrier basis. In that capacity, TeleSpan often employs a value-added reseller approach, procuring bandwidth from one or more facilities-based providers (when multiple options are indeed available), and with the addition of its engineering expertise, TeleSpan bundles and resells complete point-to-point solutions to its CMRS customers.

Based on its direct experience with AT&T in its capacity as an ILEC in many California markets, TeleSpan echoes Sprint Nextel's concerns.[1] AT&T's practices in particular are undermining TeleSpan's ability to compete with AT&T and, in light of concerns such as Sprint Nextel's, are harming competition among and from CMRS providers. As Sprint Nextel accurately observes in its comments, in many locations, ILECs exercise near monopolistic control over the vast majority of installed network infrastructure that serves the requirements of transport to and from CMRS providers' cell sites – a "critical input" wireline service commonly referred to as "backhaul."[2] Backhaul service is typically provided over dedicated, point-to-point private line circuits, most commonly at the electrical DS1 level. AT&T predominates in providing these circuits in its ILEC territories, although occasionally there is some marginal amount of CLEC competition.[3]

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1 TeleSpan's comments are solely the result of its experiences with AT&T. Sprint Nextel in its comments expresses concern regarding both AT&T and Verizon, in particular. TeleSpan takes no position with regard to Sprint's comments as they might apply to Verizon.

2 *See* Sprint Nextel Comments at 3-4. The backhaul routes that AT&T controls through special access are enduring and *appreciating* assets due to the *ubiquitous customer access* provided by its rights-of-way, inter-ducting, conduit, aerial drops, customer premise demarcation, and so forth that enable service over that particular route. Because of the hurdles facing a would-be facilities-based competitor, such access is in fact *increasing* in value, regardless of the state of depreciation, date of installation, or level of rate payer subsidization of the transmission hardware installed in that access.

3 As Sprint Nextel notes, AT&T, T-Mobile, and Nextel all report that CMRS providers have no choice but to rely on ILEC transport facilities well over 90% of the time. Sprint Nextel Comments at 4-5.

In addition to the "direct sale" practices that are the subject of Sprint Nextel's comments, by making it difficult for wholesale providers like TeleSpan to purchase these special access services at reasonable rates and conditions for resale, AT&T's practices further undermine the free market development of competitive and innovative backhaul alternatives for the CMRS providers. Thus, TeleSpan echoes Sprint Nextel's contention that ultimately, anti-competitive behavior in the pricing of special access services results in significant financial harm to the public.

In addition to competitive harms, pricing practices that frustrate the emergence of competition in the provision of *innovative wholesale inputs* to CMRS providers could negatively affect the *public's safety*. This is a result of the fact that both the public and essential emergency services are increasingly relying on the availability and integrity of wireless communications services as their primary means of communication – including during disasters and other emergency situations.

As CMRS providers' subscriber bases increasingly demand wireless products that include not only voice, but more data (*e.g.*, text messaging, graphics, video, and the like.) and even Internet access, CMRS carriers present an increasing competitive alternative to traditional wireline services.[4] Furthermore, as these wireless products are adopted, CMRS providers' cell site backhaul requirements grow accordingly and thus place an ever increasing strain on the electrical DS1 service provided by the ILEC. With the advent of fourth generation wireless technology and myriad associated product offerings, cell site backhaul requirements are expected to double and perhaps triple within the next several years, magnifying both the financial and technical significance of this critical

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4 *See, e.g.,* Sprint Nextel Comments at 8-9.

input to CMRS providers' services, to the point where unfettered control of that critical input by a directly, or quasi, competitive entity is clearly no longer in the public's best interest.

TeleSpan's CMRS customers frequently complain to TeleSpan about perceived shortcomings of AT&T's backhaul services, including such things as: exorbitantly high prices; frequent lack of availability; excessive time to provision requested services; inferior network reliability; and impractically long Mean Time To Restoration ("MTTR") commitments that AT&T provides for the repair and restoration of electrical DS1 service to the cell site in the event of an outage, during which time the wireless customers (and in some cases emergency services) are in many instances, left without service from the affected cell site(s).

In response to concerns such as these and TeleSpan's own observations that CMRS providers are demanding a superior backhaul product, TeleSpan formulated a unique value proposition by which it would aggregate the *total per site backhaul demand* of "collocated" CMRS providers (*i.e.,* more than one CMRS provider cell site at a particular physical location),[5] and leverage that aggregated backhaul demand to place an optical DS3 order with AT&T to that cell site location. TeleSpan would then provide on-site MUXing of that DS3, breaking it into its constituent 28 DS1 circuits and making those *optical* DS1 circuits available for resale to the various CMRS collocated carriers.

Through this method, which represents a more efficient use of AT&T's network infrastructure, and provided that TeleSpan secures the DS3 at reasonable rates from

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5 Current industry estimates are that approximately 30% of all cell sites in the United States are considered "collocations."

AT&T, TeleSpan could sell the optical DS1 service to its CMRS customers in a manner that has the potential to reduce their current backhaul expenses at those sites by as much as 50%. In addition, optical DS3 service is far more reliable than the current electrical DS1 service and as a result, service outages would likely be less frequent, and the MTTR commitments would likely be cut in half – greatly improving the integrity of the public's and first responders' wireless service in both typical and emergency circumstances.

Although AT&T would remain the underlying facilities provider whether the CMRS carriers continued to obtain higher cost electrical DS1s directly from AT&T, or lower cost optical DS1s through TeleSpan, the TeleSpan value proposition would likely result in a decrease in revenue to AT&T due to the achieved bandwidth aggregation efficiencies. To offset this, TeleSpan has been willing to make substantial revenue, term, equipment purchase, services, and special construction commitments to AT&T to secure their cooperation as provider of the underlying facilities, on terms that AT&T has typically made available to other customers under its pricing flexibility contracts. Any potential loss of revenues would be offset, TeleSpan believes, by those commitments and by the fact that much of AT&T's installation costs would be covered through TeleSpan's willingness to pay special construction charges when necessary to extend the optical service (which AT&T could also then exploit to provide services to adjacent customers).

TeleSpan's ability to provide its competitive wholesale product to CMRS carriers has been severely compromised in the past year. Beginning in June 2006, TeleSpan sought to negotiate a volume and term discount for special access services with AT&T in order to be able to provide its wholesale services as described above. TeleSpan reviewed virtually all of AT&T's existing pricing flexibility contract tariffs and felt confident, based on that research which showed that AT&T regularly entered into such arrangements, that it would achieve a similar result.

TeleSpan negotiated in good faith over a 10-month timeframe, shared its business plan in detail with AT&T, and by October 2006 was offered terms and conditions including discounts that were agreeable to TeleSpan. TeleSpan accepted these terms and relied on them (with AT&T's knowledge) to sign up customers late in 2006. TeleSpan was awaiting the filing of AT&T's special access price flex tariff transmittal reflecting those terms when in February of 2007, AT&T balked without explanation and sought to replace the deal terms with an offer that effectively negated the market utility of the previous discount structure. In doing so, AT&T effectively undermined the financial foundation of the arrangement. As of this date, AT&T refuses to reinstate the deal terms that made the proposition practicable to TeleSpan in the first place.

TeleSpan believes that AT&T abused its monopoly standing for essential special access services to protect itself and its operating subsidiaries from effective wholesale (with TeleSpan) and retail (with CMRS providers) competition. AT&T's unreasonable practices and untimely actions effectively subjected TeleSpan to a denial of service and has manifested as an ongoing abuse of the ILEC's control over essential facilities, as Sprint Nextel notes in its comments. Actions such as these only exacerbate the concerns with RBOC provision of special access services on which Sprint Nextel commented.

For these reasons, TeleSpan respectfully requests that the Commission take cognizance of AT&T's actions that deprive CMRS carriers, directly and indirectly, from receiving cost-effective, efficient, and innovative special access backhaul services. The

Commission should investigate the nature, breadth and frequency of special access pricing and provisioning practices and formulate an appropriate regulatory response to promote: a) CMRS competition with wireline carriers; b) CMRS competition among other wireless companies; and c) introduction of innovative wholesale products and services that contribute to vibrant competition.

The Commission should also accelerate its examination of ILEC practices and rates for special access services in Docket No. 05-25, refreshing the record if need be, and consider eliminating pricing flexibility where behavior and practices, such as those manifested by AT&T, demonstrate that an ILEC does not face effective actual or potential competition.

Respectfully Submitted,

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May 22, 2007